



**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA**

FILED

01-08-07
12:05 PM

Order Instituting Rulemaking to Implement the
Commission's Procurement Incentive
Framework and to Examine the Integration of
Greenhouse Gas Emissions Standards into
Procurement Policies.

R.06-04-009

**REPLY COMMENTS OF
SIERRA PACIFIC POWER COMPANY (U 903 E) ON PROPOSED DECISION OF
PHASE 1 ISSUES**

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January 8, 2007

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Pursuant to Rule 14.3(d) of the California Public Utilities Commission ("CPUC" or "Commission") Rules of Practice and Procedure, Sierra Pacific Power Company (Sierra) submits these reply comments on the proposed *Interim Decision on Phase I Issues: Greenhouse Gas Emissions Performance Standard* issued on December 13, 2006 ("Proposed Decision" or "PD"). Per that Rule, Sierra points out misrepresentations of law, fact or condition of the record in the comments by NRDC *et al.*¹

Before addressing the NRDC *et al* Comments, Sierra notes that the compliance window requested in its January 2 comments is consistent with the approach that PacifiCorp reflected in its comments. That is, by allowing a 60 day window for any multi-jurisdictional utility ("MJU") to make its application for alternative compliance pursuant to Pub. Util. Code § 8341(d)(9)² before implementing the attestation requirement, PacifiCorp could elect to forego filing within that time period, and instead make its advice letter filing in February 2008 and retain the option

¹ *Comments of the Natural Resources Defense Council (NRDC), The Utility Reform Network (TURN), and the Union of Concerned Scientists (UCS) on the Draft "Interim Opinion on Phase I Issues: Greenhouse Gas Emission Performance Standard"* ("NRDC *et al* Comments").

² All references are to the Public Utilities Code unless otherwise indicated.

to file a § 3841(d)(9) application at a later time. Sierra urges adoption of this approach as administratively advantageous and in the best interest of ratepayers.

With respect to the NRDC *et al*'s Comments at pages 4-7 regarding the attestation approach and the § 8341(d)(9) alternative compliance mechanism for MJUs, Sierra urges the Commission to reject their request to preclude the *ex post* attestation process or inject new requirements for alternative compliance applications.

Contrary to NRDC *et al*'s comments, imposing a “pre-approval” requirement on Sierra would not be the “most administratively simple and effective means of enforcing the EPS to best serve the interests of California consumers”³ and NRDC *et al* has failed to indicate how that could possibly be the case for a MJU like Sierra. As carefully and thoroughly expressed in Sierra's January 2 Comments, the Legislature recognized the special circumstances of MJUs and provided an explicit means for entities like Sierra to comply through the statutory alternative compliance route. *Approval of such alternative compliance in the case of Sierra would be the most administratively simple means to comply with the statute and benefit Sierra's California ratepayers.* This is why Sierra has requested the 60 day window to pursue an alternative compliance application and not be simultaneously subjected to the interim attestation mechanism. To do as NRDC *et al* suggests would completely alter the resource planning approach the CPUC has used for years with respect to Sierra as a MJU, upset the deference the CPUC affords the Public Utilities Commission of Nevada (“PUCN”) on Sierra's resource planning matters, and would likely result in tremendous administrative complexities along with significant rate increases for Sierra's California customers.⁴ Accordingly, NRDC *et al*'s

³ NRDC *et al* Comments, page 4.

⁴ See Sierra's Comments, pages 5 to 7.

comments as noted above, and its entire arguments against the attestation and MJUs' alternative compliance mechanisms, misrepresent the facts in the case of Sierra.

However, Sierra is most disconcerted with NRDC *et al*'s attempt to inject new requirements on the Commission with respect to applications under § 8341(d)(9) for MJU alternative compliance mechanisms.⁵ NRDC *et al*'s comments misstate the law with respect to § 8341(d)(9) by asserting that two of the three PacificCorp tests that the PD adopts should be rejected, and instead only interpret § 8341(d)(9)(b)'s "subject to review" reference to essentially mean to impose the EPS described in SB 1368.⁶ This is completely circular logic whereby NRDC *et al* asks that any "alternative compliance" mechanism can only be approved if it satisfies the EPS rules. NRDC *et al*'s comments upend the express statutory language and intent of § 8341(d)(9) and should be rejected.

With respect to NRDC *et al*'s concerns about public participation, Sierra notes that the public has extensive participation opportunities. First, the Commission's processes with respect to any application are inherently public, so there can be no reasonable question there in terms of an opportunity should a § 8341(d)(9) application be filed. Secondly, in the case of Sierra, its upcoming resource planning process before the PUCN is also a public process, as described in Sierra's January 2 comments. Accordingly, Sierra fails to see how there is any concern in this area. To the extent that NRDC *et al*'s comments are meant to suggest that the public should be given an opportunity to alter the statutory requirements that are already established for alternative compliance, Sierra strenuously objects. This docket is the appropriate rulemaking forum for SB 1368 implementation; neither entities such as NRDC nor the public should be

⁵ NRDC *et al* Comments, pages 5-7.

⁶ See NRDC *et al* Comments, page 7 "ensure that the MJU rules for alternative compliance are completely consistent with the requirements of SB 1368"

given any additional “bites at the apple” to develop GHG policy when and if a MJU files a § 8341(d)(9) application.

In conclusion, Sierra urges the Commission to reject NRDC *et al*’s proposals with respect to the attestation and alternative compliance mechanisms. NRDC *et al*’s comments misstate the facts with regard to administrative convenience and ratepayer cost containment, and ignore the historical deference provided to the PUCN resource planning process and oversight of Sierra. Moreover, the NRDC *et al* Comments misstate law by attempting to impose an illogical standard for “alternative compliance” by requiring EPS compliance as a condition of approving a § 8341(d)(9) application.

For the reasons expressed above, the Commission should reject those portions of NRDC *et al*’s comments, and particularly reject items I and II (pages 13-16) in its Appendix to those comments.

January 8, 2007

Respectfully submitted,

By _____/s/_____

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Certificate of Service

I hereby certify that I have this day served a copy of “Reply Comments of Sierra Pacific Power Company (U 903 E) on Proposed Decision of Phase 1 Issues” on all known parties to R.06-04-009 by transmitting an e-mail message with the document attached to each party named in the official service list. Parties without e-mail addresses were mailed a properly addressed copy by first-class mail with postage prepaid.

Executed on January 8, 2007 at Sacramento, California

_____/s/____

Eric Janssen

R.06-04-009
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